REMARKS

Revocation of Power of Attorney

Applicant is enclosing herewith a Revocation of Power of Attorney and Appointment of New Attorney naming BRUCE H. TROXELL as attorney of record in this patent application. It is requested that all further correspondence regarding this matter be forwarded to TROXELL LAW OFFICE PLLC at the address listed on the enclosed form. A CHANGE OF ADDRESS FORM is also being submitted herewith.

Claim Rejections

Claims 1-6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Huang in view of Chubinsky.

Drawings

It is noted that no Patent Drawing Review (Form PTO-948) was received with the outstanding Office Action. Thus, Applicant must assume that the drawings are acceptable as filed.

New Claims

By this Amendment, Applicant has canceled claims 1-6 and has added new claims 7-10 to this application. It is believed that the new claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

The new claims are directed toward a handheld massage device comprising: a circular main body (B) having at least one threaded opening (B1, D); and a plurality of message bodies, each of the plurality of message bodies having a message section (C1-C5) and a neck section (E) connected to the message section, each neck section having: a threaded section (E2) located on a first end; and a dilated section (E1) flaring outwardly from a second end thereof and connected to the message section, wherein one of the plurality of message bodies being removably connected to each of the at least one threaded opening.

Other embodiments of the present invention include: the at least one threaded opening includes three openings, and the plurality of message bodies includes at least three message bodies; the neck section of each of the plurality of message bodies has a projecting section (E3) located adjacent to the threaded section and engaging an exterior of the circular main body; and the neck section and the massage section are integrally made.

The primary reference to Huang teaches a handle (11), a plurality of support arms (12), and a plurality of massage heads (13).

Huang does not teach a circular main body having at least one threaded opening; each neck section having a threaded section located on a first end; each neck section having a dilated section flaring outwardly from a second end thereof and connected to the message section; one of the plurality of message bodies being removably connected to each of the at least one threaded opening; nor does Huang teach the neck section of each of the plurality of message bodies has a projecting section located adjacent to the threaded section and engaging an exterior of the circular main body.

The secondary reference to Chubinsky teaches a massage device including an oval handle part (30) having a threaded hole (33) with a countersink (37), and a tool part (20) having a head end (22), a shaft (23), a collar (25), and a threaded end (27). The collar being inserted into the counter bore when the tool part is connected to the handle part. Chubinsky teaches a curved section between the shaft and the collar, but does not teach a dilated section connected to the head end.

Chubinsky does not teach a circular main body having at least one threaded opening; each neck section having a dilated section flaring outwardly from a second end thereof and connected to the message section; nor does Chubinsky teach the neck section of each of the plurality of message bodies has a projecting section located adjacent to the threaded section and engaging an exterior of the circular main body.

Even if the teachings of Huang and Chubinsky were combined, as suggested by the Examiner, the resultant combination does not suggest: a circular main body having at least one threaded opening; each neck section having a dilated section flaring outwardly from a second end thereof and connected to the message section;

nor does the combination suggest the neck section of each of the plurality of message bodies has a projecting section located adjacent to the threaded section and engaging an exterior of the circular main body.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious, unless there is some direction in the selected prior art patents to combine the selected teachings in a manner so as to negate the patentability of the claimed subject matter. This principle was enunciated over 40 years ago by the Court of Customs and Patent Appeals in In re Rothermel and Waddell, 125 USPQ 328 (CCPA 1960) wherein the court stated, at page 331:

> The examiner and the board in rejecting the appealed claims did so by what appears to us to be a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure. ... It is easy now to attribute to this prior art the knowledge which was first made available by appellants and then to assume that it would have been obvious to one having the ordinary skill in the art to make these suggested reconstructions. While such a reconstruction of the art may be an alluring way to rationalize a rejection of the claims, it is not the type of rejection which the statute authorizes.

The same conclusion was later reached by the Court of Appeals for the Federal Circuit in Orthopedic Equipment Company Inc. v. United States, 217 USPQ 193 (Fed.Cir. 1983). In that decision, the court stated, at page 199:

> As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references,

> combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

In In re Geiger, 2 USPQ2d, 1276 (Fed.Cir. 1987) the court stated, at page 1278:

> We agree with appellant that the PTO has failed to establish a *prima facie* case of obviousness. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination.

Applicant submits that there is not the slightest suggestion in either Huang or Chubinsky that their respective teachings may be combined as suggested by the Examiner. Case law is clear that, absent any such teaching or suggestion in the prior art, such a combination cannot be made under 35 U.S.C. § 103.

Neither Huang nor Chubinsky disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed structure. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious Applicant's new claims.

Summary

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

Date: January 31, 2005 By: 

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